

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0734

Individual Income Tax
Calendar Years 1994, 1995, and 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. **Adjusted Gross Income** – Best Information Available (BIA)

Authority: IC 6-8.1-5-1 (a), (b); IC 6-8.1-5-4 (a);

Taxpayer protests the assessment based upon best information available.

STATEMENT OF FACTS

Taxpayers are husband and wife who own and operate one each of two licensed package liquor stores. During the audit, numerous requests were made by the auditor for adequate records to complete an accurate audit. Despite numerous requests, by both the auditor and the hearing officer, only a fraction of records normally examined were made available. The auditor completed "best information available" audits for two locations. Letters of Findings were issued denying taxpayer as no evidence to rebut the assessment was made available.

At hearing, taxpayer's CPA provided additional facts, observations, and conclusions he reached to support the reconstruction of taxpayer's 1994 through 1996 records in a memorandum dated June 20, 2000 which was basically the same as those provided the auditor on February 16, 1999. No detailed information or distributor records were made available at hearing as previously requested.

In plain straightforward language, IC 6-8.1-5-1 (a), authorizes the Department, if it reasonably believes that a taxpayer has not reported the proper amount of tax due, to make a proposed assessment of unpaid tax on the basis of the best information available to the department. Audit's BIA determinations were made necessary by taxpayer's failure to maintain or provide pertinent information, records, or invoices.

1. **Adjusted Gross Income** – Best Information Available

DISCUSSION

Taxpayer protests the assessment and states its records were incomplete because it experienced a basement flood in 1995, which destroyed some of the records. Taxpayer's CPA states that it has reconstructed taxpayer's records and provided a memorandum dated June 20, 2000.

Taxpayer admits that he "may" owe additional taxes. However, taxpayer protests the means by which audit determined the amount of income tax owed. Taxpayer disagrees with audit's determination of the base amount of its gross retail income and error factors. Taxpayer contends that the mark ups in an economically depressed area never generated the quantity of sales estimated by the auditor. Further, taxpayer contends that the calculated error factor determined by audit is a wholly unrealistic estimate of the actual sales of its business.

The Department's proposed assessment, under IC 6-8-1-05-1 (b), is deemed to be "prima facie evidence that the department's claim for the unpaid tax is valid." That same section of the Indiana Code goes on to state that "the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Taxpayer has not provided proof that the assessments are in error.

Under IC 6-8.1-5-4 (a), "Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." The records referred to "include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and cancelled checks."

Taxpayer has not provided records or source documents.

The audit was conducted in the absence of taxpayer's sales, purchases and expense records. Minimum business records were supplied to the auditor after numerous attempts. By failing to present any viable or substantive evidence, the taxpayer has failed to meet its burden of proof, imposed under IC 6-8.1-5-1- (b), to rebut the presumptive validity afforded the Department's proposed Income tax assessments.

The taxpayer asserts that no adjustment was made for overhead and other expenses. Rather than adjusting for other expenses (which the taxpayer had deducted on schedule C) the appropriate remedy is to increase reported income by the *additional sales* assessed in the sales tax audit less the cost of goods sold associated with those sales. The auditor erroneously arrived at net income by reducing *total sales* by *total cost of goods sold* and giving credit for income reported. The department finds that taxpayer has submitted documentation to substantiate the adjustment.

FINDING

Taxpayer's protest is partially sustained and partially denied.